

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

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Case No. 3:09-cv-471

:

Magistrate Judge Michael R. Merz

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**ORDER IN COMPLIANCE WITH THE MANDATE**

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On November 13, 2014, the United States Court of Appeals for the Sixth Circuit affirmed this Court's denial of Respondent's Motion to Vacate the Judgment under Fed. R. Civ. P. 60(b). *Gillispie v. Warden*, 771 F.3d 323 (6<sup>th</sup> Cir. 2014). This Court formally notified the parties and the Montgomery County Common Pleas Court of that decision on November 17, 2014 (Doc. No. 123), but noted "Because the mandate has not yet issued, this Court does not presently have jurisdiction of the case so as to enter an order in compliance with the Sixth Circuit's opinion." *Id.* at PageID 4964.

The Sixth Circuit filed the Mandate on December 5, 2014, and transmitted it to this Court where it has now also been filed (Doc. No. 124). Issuance of the mandate returns jurisdiction of the case to this Court. In obedience to the Mandate, the Court confirms that it "is without further jurisdiction in [this] case." *Gillispie*, 771 F.3d at \*15. The Clerk shall terminate this case on the docket of this Court.

This Order has no impact on the preclusive effect of the Decision and Order Granting the

Writ which the Sixth Circuit observed is left “to the Ohio courts, in the first instance, to determine . . .” *Id.* Nor, of course, does this Order preclude a new petition for habeas corpus relief should Gillispie be re-convicted on re-trial in the Common Pleas Court. Such a petition would not require Circuit Court permission to proceed as a second or successive petition because it would be directed at a new judgment of the Common Pleas Court. *Magwood v. Patterson*, 561 U.S. 320 (2010).

December 10, 2014.

s/ ***Michael R. Merz***  
United States Magistrate Judge

Copy: The Honorable Steven K. Dankof, Sr.